

Hilton Garden Inn Downtown Nashville (HGI) 305 Korean Veterans Blvd., Nashville, Tennessee 37201 May 5-8, 2019

Important Notes:

- Follow us on Facebook at Tennessee Public Utility Commission and on Twitter @tennesseePUC
- Unless noted otherwise, all conference sessions are held in the HGI Grand Ballroom.

AGENDA

Sunday, May 5, 2019

1:00 – 5:30 p.m.	Registration - HGI Wine Bar
3:00 – 4:00 p.m.	Subcommittee on Law Meeting - Germantown Room
4:00 – 5:00 p.m.	NCRA Alumni Association Meeting - Germantown Room
5:00 – 6:00 p.m.	Subcommittee on ALJs Meeting - Germantown Room
4:00 – 6:00 p.m.	Optional Introductory Session: The Structure of Utility Regulatory Law
2.0 Hours MCLE General Credit	A special encore 2-hour tour of the entire body of the substantive law of utility regulation: its foundations, structure, intersections and frontiers. With this mental "file cabinet," newer attorneys can identify legal subjects deserving more study, and veteran attorneys can structure their mentoring efforts.
	Presenter: Scott Hempling, Attorney at Law; Author of Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction and Preside or Lead? The Attributes and Actions of Effective Regulators; Adjunct Professor, Georgetown University Law Center
6:00 – 8:00 p.m.	Welcome Reception – Wine Bar

Monday, May 6, 2019

7:00 – 8:30 a.m.	Continental Breakfast - Wine Bar
8:30 – 8:45 a.m.	Conference Kickoff by 2019 NCRA President Kelly Cashman-Grams , General Counsel, Tennessee Public Utility Commission
	Invitation to the 2020 Annual NCRA by 2020 NCRA President Elizabeth Stevens , Assistant Attorney General, Colorado Attorney General's Office
	Opening Remarks by Robin L. Morrison , Chair, Tennessee Public Utility Commission
8:45 – 9:45 a.m.	Session 1: Oh Joy! The Court Opinions Every Regulatory Attorney Should Know & Why
1 Hour MCLE General Credit	Civil rights lawyers need to know <i>Brown v. Board of Education</i> . First Amendment lawyers must know <i>New York Times v. Sullivan</i> . What do utility regulatory lawyers have to know? Using ten seminal cases (among many) that every practitioner should know—cases covering the Takings Clause, Commerce Clause, Supremacy Clause and central regulatory principles—Scott Hempling will summarize their facts, assess their legal reasoning, and explain why they matter today.
	Presenter: Scott Hempling , Attorney at Law; Author; Adjunct Professor, Georgetown University Law Center
9:45 – 10:00 a.m.	Break
10:00 – 11:00 a.m.	Session 2: Harmonizing Utility Law and Economics
1 Hour MCLE General Credit	What is the economic basis for regulation? Why continue regulating? What factors should be considered when it is time to "deregulate." Why does deregulation work sometime but not always? The answer to these questions is often due to the underlying economic structure of the industry. Failure to address them, and consider them honestly, often leads to wasted resources, higher costs for consumers, and further environmental degradation. Harmonizing the economic and legal structure will help us avoid hitting costly discordant notes when making utility policy decisions.
	Presenter: Ken Rose, Ph.D., Associate Teaching Professor at DePaul University in Chicago, Illinois, and a Senior Fellow with the Institute of Public Utilities at Michigan State University

11:00 a.m. – 12:00 p.m.	Session 3: A Little Less Conversation: Appellate Practice Tips from the Bench
1 Hour MCLE General Credit	Appellate Court practice can occur infrequently in the course of administrative and regulatory law. Chief Justice Jeffrey S. Bivins of the Tennessee Supreme Court, Chief Judge D. Michael Swiney of the Tennessee Court of Appeals, and Judge Frank Clement, Presiding Judge of the Middle Section of the Tennessee Court of Appeals, will provide practical tips for appellate practice from the perspective of the appellate judge. The judges will discuss all aspects of appellate practice, including brief writing, motion practice and oral argument. Moderator: Aaron Conklin, Senior Assistant General Counsel, Tennessee Public Utility Commission
	Presenters: Justice Jeffrey S. Bivens, Chief Justice, Tennessee Supreme Court Judge D. Michael Swiney, Chief Judge, Tennessee Court of Appeals Judge Frank Clement, Jr., Presiding Judge, Tennessee Court of Appeals
12:00 – 1:00 p.m.	Lunch – Wine Bar
1:00 – 1:30 p.m.	Session 4: The Washington Report: The World Still Turns
½ Hour MCLE General Credit	Hear the dish on recent legal and regulatory happenings on Capitol Hill, in the courts, and in relevant federal agencies. This is a session that never disappoints. And with so much fodder going on in D.C. now-a-days, you surely won't want to miss this year's session.
	Presenter: Brad Ramsay, General Counsel, National Association of Regulatory Commissioners (NARUC)
1:30 – 2:30 p.m.	Session 5: Here's A Quarter Call Someone Who Cares: Current Updates in Telecom Policy
1 Hour MCLE General Credit	While payphones may be hard to find these days and may cost more than a quarter, the policy-making in telecom continues to speed ahead with an intensifying focus on connecting our cars, homes, cities and transportation. The FCC, the Hill and state/local policy-makers and legislators are examining how to best deliver broadband, voice and cutting-edge applications to consumers. Please join our expert telecom panel – who all still care a lot by the way – as we get updated on the headlines from the telecom sector over the last year. Specifically, our team will examine infrastructure topics (broadband rollout, 5G, small cell), USF, Pole Attachments, Net Neutrality, state preemption and questions around the digital divide. (And special trivia prize for those who know the latest rate for a local payphone call.)

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	Moderator: Lisa R. Youngers, President & CEO, The Fiber Broadband Association Panelists: Dave Conn, Vice President – State Government Affairs, T-Mobile Joanne Hovis, President, CTC Technology and Energy Joe Gillan, Economist, Gillan & Associates Andy Klein, Managing Attorney, Klein Law Group, PLLC
2:30 – 2:45 p.m.	Break
2:45 – 3:45 p.m.	Session 6: The Case Against Direct FERC Regulation of DER
1 Hour MCLE General Credit	Increasing the adoption of distributed energy resources challenges assumptions embedded in decades-old public utility laws. At the federal level, through a patchwork of orders, the Federal Energy Regulatory Commission's current approach to energy transfers from Distributed Energy Resources (DERs) splits authority with state regulators based on various factors, including technology, and location on the grid. This fragmented regulatory regime could doom DERs to segmented markets, preventing the creation of a coherent framework for DER development. This presentation will examine the current legal regime and suggest a path forward that puts states in charge. Moderator: Monica Smith-Ashford, Deputy General Counsel, Tennessee Public Utility Commission
	Presenter: Ari Peskoe , Director, Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program
3:45 – 4:45 p.m. 1 Hour MCLE General Credit	Session 7: Build it and They Will Come vs. the Pipe to Nowhere - Balancing Incentives for Economic Development with the Cost of Extending Natural Gas Infrastructure
	Traditional regulatory practice has been focused on justifying the cost of extending infrastructure through a demonstration of known or projected revenue attributable to projects. State statutory and administrative schemes have historically employed cost-benefit tests to protect captive customers of gas utilities from shouldering the burden of potentially speculative system expansion. As the cost of pipeline system installation has steadily increased with the demand for natural gas availability, local distribution companies ("LDCs") are faced with perilous and costly decisions as their systems expand into more rural areas that require longer pipes to reach new customers. This is especially true when considerations of economic development are part of the equation, as the capacity of facilities required to permit development of commercial and industrial load are frequently greater than for residential development. It is risky for LDCs to make risk capital investment in facilities in advance of known and committed load for fear of substantial stranded investment, yet businesses are reluctant to commit to development in areas without the knowledge that sufficient infrastructure exits to support their operations. In addition to

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	transportation, electricity and communication infrastructure, this calculus increasingly requires natural gas capacity required to serve both their processes and space heating, as well as the residential needs of the employees they must attract.
	This panel will explore ways that two states have attempted to address the conundrum presented by economic development through statutory enactment and administrative promulgation, and will examine examples of projects with an eye toward the advantages and challenges presented by each approach.
	Moderator: Claudia Earls, Vice President and Chief Counsel, Northern Indiana Public Service Company
	Presenters:
	Andrew S. Tubbs, Vice President, External and Customer Affairs, Columbia Gas of Pennsylvania and Maryland
	John F. Coleman, Jr., Commissioner, Pennsylvania Public Utility Commission Christopher C. Earle, Senior Counsel, Northern Indiana Public Service Company
6:00 – 8:00 p.m.	Conference Dinner – Martin's Bar-B-Que (next door to the Hilton Garden Inn; 410 4 th Avenue, South, Nashville 37201), The Rutledge Room (2 nd Floor)

Tuesday, May 7, 2019

6:30 – 8:00 a.m.	Continental Breakfast - Wine Bar
8:00 – 9:00 a.m.	Session 8: Why Percent Water Loss as a Metric Isn't Cutting It in Rate Cases But What Are The-Alternatives?
1 Hour MCLE	
General Credit	Excessive water loss is seen as a potential warning sign of the financial health and operational well-being of a water utility. Many regulatory commissions use water loss as a percentage of purchased/produced water to establish rates and to judge utility management's quality and competency; however, there is a growing debate on the effectiveness of <i>percent water loss</i> as a tool to assess the operational health of a water utility.
	We are fortunate to have three distinguished panelists who approach this issue from different perspectives and experiences. As Vice-Chairman of the Tennessee Public Utility Commission, Dr. Kenneth C. Hill will provide his perspective and experience on how percent water loss has been used in proceedings before a Commission and the concerns a Commission may have on excessive water loss and its impact on a utility's operational health. With more than 25 years of experience with the Kentucky Public Service Commission and currently in private practice representing utilities before the Commission, Gerald E. Wuetcher will discuss Kentucky's use of a 15% unaccounted-for water loss threshold in ratemaking and quality of service proceedings and the challenges presented by its use of a percent water loss. With his almost three decades of

	consulting work with the public and private sector and current chair of the AWWA Outreach Subcommittee on the Water Loss Control Committee, M. Steve Cavanaugh, Jr. will provide his experience on the difficulties utilities have with a percent water loss metric and the work of AWWA on a more meaningful metric.
	Moderator: Karen Stachowski, Assistant Attorney General, Consumer Advocate Unit, Office of the Tennessee Attorney General
	Presenters: Kenneth C. Hill, Ph.D., Vice Chairman, Tennessee Public Utility Commission Jerry Wuetcher, Counsel to the Firm, Stoll Keenon & Ogden PLLC; General Counsel, Kentucky Rural Water Association; former Kentucky Public Service Commission Executive Advisor, Deputy General Counsel, and Staff Attorney M. Steve Cavanaugh, Jr., P.E., M. Steve Cavanaugh Jr., P.E., President, CEO Cavanaugh and Associates, PA; Chair of Outreach and Education for the American Water Works Association Water Loss Control Committee
9:00 – 10:00 a.m.	Session 9: Eliminating Agency Deference – The Regulatory Accountability Act of 2017
1 Hour MCLE General Credit	The <i>Chevron</i> doctrine gives regulatory agencies substantial discretion to decide what they can do under the laws. In today's regulatory world, agencies often step in to fill the gap, putting forth their own interpretation of a statute. As a result, it has been criticized as "creating an unaccountable fourth branch" of government and it has become the target of conservatives intent on reducing the power of regulators.
	The U.S. House of Representatives passed The Regulatory Accountability Act of 2017 to repeal the Chevron deference standard and require mandatory litigation stays for new rules, mandatory six-month delays for all rules, and reduced the ability of agencies to use guidance in day-to-day operations. This session will focus on how regulatory agencies handle administrative law, primarily by codifying and enforcing rules and regulations. Agencies may also have significant "expertise" in the field they are responsible for regulating, such that "their practical knowledge" may help them come up with the best answers to new problems. And how this bill would make the already ossified rulemaking process even more time consuming and costly, threatening the ability of federal regulatory agencies to protect public health and safety.
	Introduction by: Tory Lawless, Docket & Records Manager, Tennessee Public Utility Commission
	Presenters: William C. Koch, Jr., Dean, Nashville School of Law, former Justice of the Tennessee Supreme Court Dan M. Lipschultz, Commissioner, Minnesota Public Utilities Commission
10:00 – 10:15 a.m.	Break

10:15 - 11:15 a.m.

1 Hour MCLE Dual Credit

Session 10: Commission Scandals: Sooner or Later, Every State Has One

This panel will take a look back at some of the more memorable utility commission scandals that have occurred in recent years and the impact of those scandals on the agency and legal staff. Six former state commission lawyers will discuss infamous commission blow-ups in California, Florida, Indiana, Louisiana, and Tennessee.

Moderator: Henry Walker, Partner at Bradley Law Firm in Nashville Tennessee; former General Counsel for the Tennessee Public Service Commission

Presenters:

Susan Miller, Staff Attorney, Clean Energy Programs, EarthJustice; formerly General Counsel for the Maryland Public Service Commission

Claudia Earls, Vice President and Chief Counsel, Northern Indiana Public Service Company; formerly Administrative Law Judge for the Indiana Utility Regulatory Commission

Steve Denman, Administrative Law Judge, Colorado Department of Regulatory Agencies – Public Utilities Commission

Jason Zeller, Attorney-at-Law representing environmental and utility consumer advocacy organizations; formerly Assistant General Counsel for the California Public Utilities Commission

11:15 a.m. – 12:15 p.m.

1 Hour MCLE General Credit

Session 11: It's Not Just About Hot Water Anymore: Why Utility Providers Need to Care About Data Privacy and Security

In the ever-expanding collection of consumer data, privacy and security are increasingly the topics of conversation. New data breaches that adversely affect consumers are announced on an almost daily basis and utility companies are not immune from the risk of a breach. There are laws that govern how certain data should be kept and protected and what needs to happen if there is a breach. This session will provide attendees with an overview of data privacy and security concerns, the governing laws and the ramifications of breaches.

Moderator: Joe Shirley, Director, Utility Audit & Compliance, Tennessee Public Utility Commission

Presenters:

Jonathan Skrmetti, Chief Deputy Attorney General, Tennessee Office of the Attorney General

Carolyn Underwood Smith, Senior Assistant Attorney General, Consumer Protection and Advocate Division, Tennessee Office of the Attorney General

Beginning 12:15 p.m.	Be sure to pick up a boxed lunch as you leave the last session today.	
Tour times vary	Break-out Sessions for those Attendees that have Pre-Enrolled:	
	Secret Sauce Tour, Tennessee Whiskey Tours Tour starts at 12:30 p.m. 4 hour tour	
	Songbird Bus Tours, Songbird Tours Nashville Tour starts at 2:00 p.m. 2 hour tour	

Wednesday, May 8, 2019

6:30 – 8:00 a.m.	Continental Breakfast - Wine Bar
8:00 – 9:00 a.m.	Session 12: We Can Work It Out
1 Hour MCLE General Credit	A common stumbling block to the adoption of renewables is the concern among Commissions regarding whether renewable options can reliably fill the need created by coal plant retirements. The panelists will explain through real world examples how and where renewables and storage are working on a utility-scale and can thus serve as a reliable replacement for retiring plants. Moderator: Susan Miller, Staff Attorney, Clean Energy Programs, EarthJustice
	Presenters: Tyler Comings, Senior Research, Applied Economics Clinic Erin Overturf, Deputy Director, Clean Energy Program at Western Resource Advocates Matt Vespa, Staff Attorney, Clean Energy Program at EarthJustice
9:00 – 10:00 a.m.	Session 13: State Considerations about the Future Role of Nuclear Energy
1 Hour MCLE General Credit	Nuclear energy provides nearly 20 percent of the nation's electricity, which equates to around 56 percent of America's clean electricity supply. But a large number of operating nuclear plants are facing headwinds due to a confluence of policy, market, and economic factors causing early closures. In addition, many states are setting aggressive policies to determine their own generation mix in the future.
	This panel will discuss the situation of America's current operating reactors and the policy and legal issues around the fleet's continued operation. The current nuclear fleet's survival also affects the potential for expanded use of nuclear technology in the future, including next-generation technology in development around the world. For states with aggressive carbon reduction goals, the answers to the nuclear questions greatly affect the clean energy generation mix needed to achieve those goals. As regulatory staff grapple with the questions around their clean energy future, an understanding of the nuclear context is an important factor in those considerations.

	Moderator: Arielle Silver Karsh, Senior Regulatory Attorney, Emera Maine, a wholly-owned subsidiary of Emera, Inc.
	Presenters: Ellen Ginsberg, General Counsel, Nuclear Energy Institute Dahl Harris, Regulatory Attorney, Law Firm of Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A. Armond Cohen, Executive Director, Clean Air Task Force
10:00 – 10:15 a.m.	Break
10:15– 11:15 a.m. 1 Hour MCLE	Session 14: Finding Calm Before and After the Storm: Utility Cost Recovery After Natural or Other Disasters
General Credit	Earthquakes, volcanic eruptions, landslides, wildfires, hurricanes, and other natural disasters can cause personal loss and tragedy. Natural disasters also pose significant challenges to utilities, both in the short and longer terms. This session will focus on how utilities organize and respond to natural disasters, the revenue implications and capital needs that follow such disasters, and the policy considerations of whether, or to what extent, a utility's infrastructure should be "hardened" or modified in an effort to make it less vulnerable to natural disasters. Among the types of disasters discussed will be the California firestorms, hurricanes in Puerto Rico, Houston, and other locations, and the response challenge of large earthquakes.
	Moderator: Lee Eng Tan, Attorney Supervisor, Florida Public Service Commission
	Presenters: Cindy Miller, Attorney-at-Law, Cindy Miller LLC Jason Zeller, Attorney-at-Law representing environmental and utility consumer advocacy organizations; formerly Assistant General Counsel for the California Public Utilities Commission
11:15 a.m. – 12:15 p.m.	Session 15: It Ain't Broke Or is it? A Primer on Utility Bankruptcy & Receiverships
1 Hour MCLE General Credit	What happens when a regulated utility becomes insolvent, or is determined to be incompetent and unable to provide safe, adequate, and reliable service? A primer on the law of bankruptcy and receiverships in the utility context, this session will cover crucial considerations that regulators must know and address when a regulated utility is facing, or has filed, for bankruptcy and/or the imposition of a voluntary or court-ordered receivership.
	Moderator: Debrea Terwilliger, Assistant Staff Counsel, Nevada Public Utilities Commission

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	Presenters: William L. Norton, III, Partner at Bradley Law Firm in Nashville, Tennessee; Adjunct Professor, Vanderbilt University Law School Robert E. Moore, Jr., President & CEO, Receivership Management Inc.
11:30 a.m. – 1:30 p.m.	Lunch – On Your Own
1:30 – 2:30 p.m.	Session 16: Under Pressure: Ensuring Professionalism and Ethical Choice in the Workplace
1 Hour MCLE Dual Credit	Lawyers face daily challenges living in the harsh, faced paced digital age. Due to the nature of practicing law, the lawyer may develop abnormal methods of coping. With constant deadlines and dealing with needy clients, lawyers may turn to alcohol and drugs in order to cope. In this presentation, lawyers will learn to spot potential barriers which prevent ethical practice. Further, lawyers will learn how to cope in a more healthy fashion learning mindfulness techniques which will reduce lawyer stress and in turn make the lawyer a more capable professional.
	Presenters: Ted Rice, Executive Director, Tennessee Lawyers Assistance Program (TLAP) Laura McClendon, Special Assistant in charge of external communications, wellness, and training for the Tennessee District Public Defenders Conference; Former Executive Director, TLAP
2:30 – 2:45 p.m.	Break
2:45 – 4:45 p.m.	Session 17: Bridge Over Troubled Water: The Arch of Ethics
2.0 Hours MCLE Dual Credit	It is easy to fall into ethically-troubled waters. Here, a series of lively skits will show us some of the daily challenges facing attorneys who practice before the fictitious Nirvana Public Utility Commission. The situations portrayed leave us to question and discuss: Will these lawyers slip into the muddy waters or steady themselves by clinging to the Model Rules of Professional Conduct?
	Moderators: Nick Walstra, Administrative Law Judge, Public Utilities Commission of Ohio & Eve Moran, former Administrative Law Judge, Illinois Commerce Commission
	Presenter: J. Richard Collier, Chief Administrative Law Judge, Tennessee Department of the Secretary of State; former General Counsel, Tennessee Regulatory Authority
4:45 p.m.	Closing Remarks by Kelly Cashman-Grams , 2019 NCRA President